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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|--|------------------------|
| 10/601,796 | 06/23/2003 | Morris Samelson | P-5435(div1) | 7988 |
| 30544 | 7590 | 11/09/2007 | | |
| JACKSON WALKER, L.L.P. 112 E. PECAN, SUITE 2400 SAN ANTONIO, TX 78205 | | | EXAMINER CHANNAVAJALA, LAKSHMI SARADA | |
| | | | ART UNIT 1615 | PAPER NUMBER |
| | | | MAIL DATE 11/09/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---------------------------------|--|
| Office Action Summary | Application No. 10/601,796 | Applicant(s) SAMELSON ET AL. | |
| | Examiner Lakshmi S. Channavajjala | Art Unit 1615 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,11,16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,11,16 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of amendment to claims and specification, remarks and declarations dated 8-23-07 is acknowledged. Receipt of supplemental amendment and remarks dated 10-29-07 is acknowledged.

Claims 3-10 and 12-15 have been canceled by the amendment of 10-29-07. Claims 1, 2, 11, 16 and 18 are pending.

Response to Arguments

The declaration filed on 8-23-07 under 37 CFR 1.131 is sufficient to overcome the US 2003/0211062 (Laden) reference. Accordingly, the rejection of instant claims over the above reference has been withdrawn.

However, in view of substantial amendments to the claims, the following new rejection has been applied:

Claim Rejections - 35 USC § 112

1. Claims 1, 2, 11, 16 and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Instant claims 1 and 18 recite the limitation "wherein said particles are adapted to be easily absorbed by the skin", which is not supported by the instant specification. Instant limitation calls for additional

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adaptation of the said particles, (and wherein said particles are adapted) besides being in an all-natural carrier medium and having a specific granularity. Instant specification did not describe any adaptation of the particles such that they are easily absorbed by the skin and hence constitutes new matter.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) OR KR in view of JP 2000344657 (JP).

Instant claim 1 has been amended to broaden the scope of the claim by deleting "consisting of" phrase and introducing "comprising phase", recite the specific granularity of the Dead Sea particles and the particles are adapted to be easily absorbed by the skin. Further, claim 18 has also been amended to include the new limitation that the particles are adapted to be easily absorbed by the skin.

KR teaches a cosmetic composition comprising large quantities of salt (15%-85%) such as bay salt, Dead Sea salt or bamboo salt, having a particle size of 0.1mm to 5.00 mm (page 3, 4th full paragraph), oil, surfactant and a polyol (page 3, 4th paragraph). KR teaches that the salts of the invention are employed to produce scrub effects and should be in the range of 0.01mm-5.0mm. KR also states that at the lower and higher salt concentrations; the scrub effects are not seen and also have an unpleasant touch.

JP teaches a scrub cosmetic that shows improved adhesion to skin and usability without damage to skin, manifests excellent keratin- removing effect by formulating individually specific water-insoluble granules, carbonic diester, and a water-soluble polymer in a specific proportion. This scrub cosmetic comprises (A) 0.01-3 wt.% of a water-soluble polymer (preferably carboxyvinyl polymer, alkyl acrylate and methacrylate copolymer, methylcellulose and the like, (B) 0.1-70 wt.% of water-insoluble granules with an average particle size of 10-1,000 μm (preferably polyethylene particles, pumice or bentonite) and (C) 0.1-30 wt.% of a carbonic diester represented by the formula (R1 and R2 are each a 6-28C hydrocarbon). This cosmetic can be used in the form of liquid, milk, cream, gel and the like by combination with other components or according to the mechanism of the vessels. Thus, the prior art recognizes that a particle size of below 1000 microns (less than 1mm) results in a cosmetic that has the excellent effects to remove the roughness and keratin from the skin surface and excellent quality a scrub cosmetic can be expected.

Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant to choose a particle of Dead Sea salts less than 1.0 mm in the cosmetic composition of KR and still expect to provide an effective skin scrubbing composition that is pleasant to touch and not irritating skin.

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2. Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over KR 149428 (KR) OR KR in view of JP 2000344657 (JP) as applied to claims 1, 16 and 18 above, and further in view of 5,997,889 to Durr et al ('889).

KR fails to teach the claimed oils of claims 2 and 11.

'889 teaches hand and body cream for skin ailments such as dry, itchy skin, eczema, psoriasis etc., comprising oils such as almond oil, jojoba oil, vitamin e oil, for moisturizing and conditioning of skin (col. 2) and beeswax for forming a protective barrier (col. 3). Further, '889 teach addition of fragrances such as rosewood, chamomile, calendula, lavender, etc (col.4, lines 43-58), as essential oils for providing immediate relief from skin discomfort. It would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include the emollients such as jojoba oil, waxes and fragrances/essential oils of '889 in the composition of KR containing salts such as bay salts or Dead sea salts because '889 teaches the ingredients for moisturizing and providing relief to psoriatic or itchy skin conditions and KR also desires a skin composition that imparts moisturizing blood flow effect as well as function as a scrub. Therefore, a skilled artisan would have expected to achieve moisturization and also provide immediate relief from skin discomfort.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

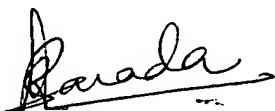
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.00 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AU 1615
November 6, 2007

A handwritten signature in black ink, appearing to read 'Lakshmi S. Channavaajjala', with a horizontal line drawn underneath the signature.

LAKSHMI S. CHANNAVAJJALA
PRIMARY EXAMINER

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L3: Entry 5 of 6

File: JPAB

Dec 12, 2000

PUB-NO: JP02000344657A

DOCUMENT-IDENTIFIER: JP 2000344657 A

TITLE: SCRUB COSMETIC

PUBN-DATE: December 12, 2000

INVENTOR-INFORMATION:

NAME

COUNTRY

HIRAOKA, SHINGO

ASSIGNEE-INFORMATION:

NAME

COUNTRY

KOSE CORP

APPL-NO: JP11150657

APPL-DATE: May 28, 1999

INT-CL (IPC): A61K 7/50

ABSTRACT:

PROBLEM TO BE SOLVED: To obtain the subject scrub cosmetic that shows improved adhesion to skin and usability without damage to skin, manifests excellent keratin- removing effect by formulating individually specific water-insoluble granules, carbonic diester, and a water-soluble polymer in a specific proportion.

SOLUTION: This scrub cosmetic comprises (A) 0.01-3 wt.% of a water-soluble polymer (preferably carboxyvinyl polymer, alkyl acrylate and methacrylate copolymer, methylcellulose and the like, (B) 0.1-70 wt.% of water-insoluble granules with an average particle size of 10-1,000 μ m (preferably polyethylene particles, pumice or bentonite) and (C) 0.1-30 wt.% of a carbonic diester represented by the formula (R1 and R2 are each a 6-28C hydrocarbon). This cosmetic can be used in the form of liquid, milk, cream, gel and the like by combination with other components or according to the mechanism of the vessels. Thus, the resultant cosmetic has the excellent effects to remove the roughness and keratin from the skin surface and the excellent quality as a scrub cosmetic can be expected.

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